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Congress of the United States

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January 7, 2000

BY FACSIMILE

The Honorable Gary S. Guzy
General Counsel
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Guzy:

A January 5, 2000 article in *Electricity Daily* by David Wojick reports that the Environmental Protection Agency (EPA) will hold a meeting on January 13th to discuss a "voluntary program to extend NSPS [New Source Performance Standards] emission controls, as well as controls on mercury and carbon dioxide, to all coal-fired power plants." According to the article, the meeting will consider proposals put forward by the Natural Resources Defense Council (NRDC) and the Clean Energy Group (CEG), a coalition of large Northeastern utilities and independent power producers. The CEG proposal calls for a "voluntary national cap and trade program to control not only SO₂ [sulfur dioxide], CO [carbon monoxide], particulates and NO_x [nitrogen oxides], but mercury and carbon dioxide."

I regard this EPA initiative as a clear violation of the Knollenberg funding restriction. Neither the Clean Air Act nor the United Nations Framework Convention on Climate Change (FCCC) authorizes EPA to establish a cap and trade program to control emissions of carbon dioxide (CO₂). The only possible legal authority for such a program is Article 17 of the non-ratified Kyoto Protocol. Indeed, emissions trading is the chief Kyoto "flexibility mechanism."

Presumably, EPA takes the position that the proposed cap and trade program is "voluntary" and, therefore, not covered by the Knollenberg restriction. However, even a voluntary program, if it is to achieve real, verifiable emissions reductions, would require EPA to develop and administer rules for measuring, certifying, and reporting emissions reductions and trades. The Knollenberg restriction prohibits EPA from proposing or issuing rules to implement, or prepare to implement, the Kyoto Protocol.

Furthermore, I question the allegedly "voluntary" character of the proposed program. EPA's relationship with electric utility companies is essentially -- and inescapably -- coercive.

Therefore, any EPA request for "volunteers" from the companies it regulates is apt to carry some risk or threat of coercion.

In the case at hand, the intimidation factor is blatant. The context for the January 13th meeting and the NRDC/CEG proposals is the NSPS program -- the regulatory program under which EPA is suing seven major electric utility companies, threatening the survival of 32 coal-fired power plants. Thus, any discussion of "voluntary" caps on ambient air pollutants, mercury, and CO₂ necessarily occurs in a climate of fear. Being sued by EPA for alleged air quality violations is a potential public relations disaster for any firm. Thus, to coal-using utilities, EPA discussion about "voluntary" emission caps for CO₂ undoubtedly translates into, "We won't sue you if you do what we want."

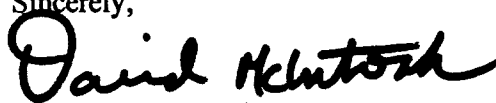
Of course, once *any* utilities "volunteer" to cap their CO₂ emissions, others will feel pressure to join the club, lest they be attacked for failing to help "save the planet." Moreover, as the number of participating companies grows, so will demands to replace the "voluntary" program with a "mandatory" one, in order to "level the playing field" and remove the "unfair" competitive advantage enjoyed by "polluters."

In short, if I were attempting to implement, or prepare to implement, the Kyoto Protocol and build a pro-Kyoto business clientele, I would proceed exactly as EPA has done and apparently plans to do.

Therefore, I request that you cancel the January 13th meeting, which so clearly flouts the will of Congress as expressed in the Knollenberg restriction. If EPA is unwilling to cancel the meeting, I request that EPA postpone it until after the State of the Union Address, when members of Congress are back in town and ready to assume their oversight responsibilities.

If EPA will not cancel or postpone the meeting, then I request, pursuant to the Constitution and Rules X and XI of the United States House of Representatives, that you meet with Subcommittee Staff Director Marlo Lewis, and other Congressional officials whom he will invite, on or before January 12, 2000. He can be reached at 225-1962. Thank you for your attention to this request.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich
The Honorable Larry Craig

The Honorable Joe Knollenberg
The Honorable Ken Calvert
Robert Damus, OMB/GC